

BRIAN M. DAUCHER, Cal. Bar No. 174212
 ROBERT S. BEALL, Cal. Bar. No. 132016
 JOSEPH H. TADROS, Cal. Bar. No. 239379
 ASHLEY E. MERLO, Cal. Bar No. 247997
 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
 A Limited Liability Partnership
 Including Professional Corporations
 650 Town Center Drive, 4th Floor
 Costa Mesa, California 92626-1925
 Telephone: (714) 513-5100
 Facsimile: (714) 513-5130
 bdaucher@sheppardmullin.com
 jtadros@sheppardmullin.com
 amerlo@sheppardmullin.com

Attorneys for Defendants

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

TRAFFICSCHOOL.COM, INC., a
 California corporation; DRIVERS ED
 DIRECT, LLC., a California limited
 liability company,

Plaintiffs,

v.

EDRIVER, INC., ONLINE GURU,
 INC., FIND MY SPECIALIST, INC.,
 and SERIOUSNET, INC., California
 corporations; RAVI K. LAHOTI, an
 individual; RAJ LAHOTI, an
 individual, and DOES 1 through 10.

Defendants.

Case No. CV067561 PA (CWx)
The Hon. Percy Anderson

**DEFENDANTS' REPLY IN
 SUPPORT OF MOTION FOR STAY
 OF THE PERMANENT
 INJUNCTION**

Hearing Information:
 Date: October 20, 2008
 Time: 1:30 p.m.
 Crtrm.: 15

Complaint Filed November 28, 2006
 Trial Commenced: November 6, 2007

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. Introduction**

3 Defendants have shown that a stay of the permanent injunction pending
4 appeal is appropriate in this case to preserve the status quo because (a) the
5 injunction may be more restrictive than necessary, (b) there is a possibility of
6 success on the merits on appeal, and (c) without a stay Defendants will suffer
7 "irreparable harm."

8 In fact, Defendants are already suffering such harm. Since implementing the
9 splash page, the DMV.ORG website has lost hundreds of thousands of visitors,
10 resulting in significant declines in advertising revenue. (Lahoti Decl., ¶ 5 & 7.) If
11 the injunction is not promptly stayed, Defendants may be unable to maintain
12 profitability or avoid downsizing. (Lahoti Decl., ¶ 7).

13 Defendants' initial data shows that the splash page injunction may be more
14 restrictive than necessary to remedy the alleged confusion. In June 2008,
15 Defendants employed various measures to the DMV.ORG website to ensure that
16 visitors were aware that it is a privately-owned, independent website, including a
17 yellow banner at the top of each page stating in 16 point font, "DMV.ORG is a
18 **privately owned website** that is **not** owned or operated by any government agency"
19 (see Image A below) as well as acknowledgement check boxes including similar
20 disclaimer language which a visitor must click through before sending
21 communications to the website. After instituting the proactive measures,
22 Defendants received virtually no emails from visitors that included their personal
23 information.

24 However, upon launching the splash page, Defendants temporarily removed
25 their proactive measures from the site, and Defendants began receiving emails in
26 which visitors included their personal information. Thus, it appears that the splash
27 page may be overly restrictive and at the same time less effective than the proactive
28 measures taken by Defendants.

1 For these reasons, and since no injury will result to Plaintiffs or the public,
2 this Court should preserve the status quo and prevent irreparable harm to Defendants
3 by issuing an injunction pending appeal.

4 **2. The Purpose of A Stay Is To Preserve The Status Quo**

5 Plaintiffs essentially argue in opposition that the Court should not stay the
6 injunction because doing so would be "inconsistent" with the Court's judgment.
7 (Opp., p.5:11-6:1.) By this flawed logic, though, an injunction would never be
8 proper. Plaintiffs appear to forget that the purpose of staying an injunction is to
9 preserve the status quo. See McClatchy Newspapers v. Central Valley
10 Typographical Union No. 46, 686 F.2d 731, 734 (9th Cir. Cal. 1982) ("Rule 62(c)
11 codifies the 'long established' and narrowly limited right of a trial court 'to make
12 orders appropriate to preserve the status quo while the case is pending in [an]
13 appellate court.' [Citation omitted.]") (cited by Plaintiffs).

14 Yet, at the same time, Plaintiffs misapply this important legal doctrine by
15 suggesting that keeping the injunction in place somehow preserves the status quo.
16 (Opp., p.5:10-11 ("[The splash page] is simply the remedy for the confusion that
17 was proven at trial, and is the status quo during the pendency of the appeal.")) Such
18 an assertion cannot be taken seriously.

19 To preserve the status quo, here, is to permit the Defendants to operate the
20 DMV.ORG website with the measures added proactively by Defendants during the
21 course of this lawsuit, and not to allow the Defendants to continue to sustain
22 catastrophic injury.

23 **3. Defendants Will Suffer Irreparable Harm Without Issuance Of A Stay**

24 Defendants have and will continue to suffer irreparable harm if a stay is not
25 issued. The Defendants have already witnessed the loss of hundreds of thousands of
26 visitors to the DMV.ORG website, have suffered significant declines in advertising
27 revenue, and were forced to significantly cut advertising expenditures in an effort to
28

1 maintain profitability. (Lahoti Decl., ¶¶ 5 & 7.) Plaintiffs have offered no evidence
2 to contradict this showing of severe harm, nor can they.

3 Courts will generally preserve the status quo pending appeal where a party is
4 subject to such dire consequences as Defendants are here. See C. Albert Sauter Co.
5 v. Richard S. Sauter Co., 368 F. Supp. 501, 520 (E.D. Pa. 1973) (granting stay of
6 execution of money judgment under F.R.C.P. 62(d) where execution would "most
7 likely terminate" the defendant and "eliminate it as a competitor"); McBride v.
8 Western Union Tel. Co., 78 F. Supp. 446, 450 (C.D. Cal. 1948) (preserving status
9 quo pending appeal where, otherwise, party's business "will be destroyed," since
10 such "considerable damage would result" if the court were in error and the party
11 "would be without a remedy to recoup such damages").

12 This Court should similarly protect the Defendants against such drastic
13 damages, and from possibly being put out of business altogether, particularly since
14 doing so will not cause harm to Plaintiffs or third parties.

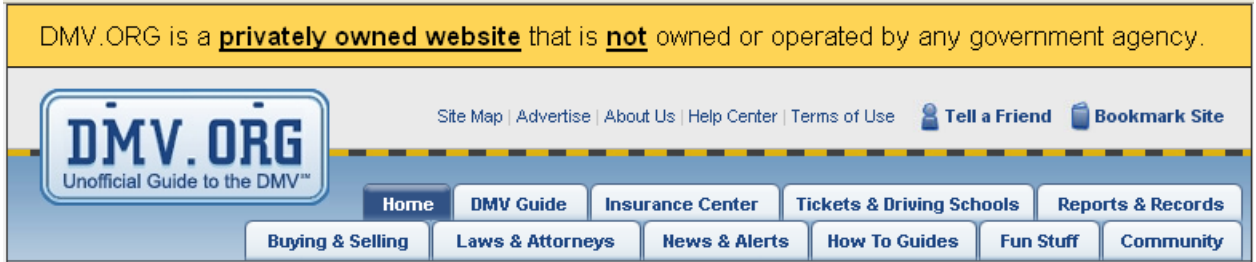
15 **4. A Stay Would Do No Harm To Plaintiffs Or The Public**

16 No harm will come to Plaintiffs or the public if the stay is issued. First,
17 Plaintiffs will not be harmed, as this Court has already ruled that they failed to prove
18 any injury as a result of the DMV.ORG website. (Findings, June 4, 2008, at 31.)
19 Therefore, issuance of a stay is not likely to injure Plaintiffs.

20 Secondly, as discussed in the Motion, Defendants employed various measures
21 before the Court entered its judgment to ensure that visitors to the website are aware
22 that DMV.ORG is a privately owned website. (Motion, Sec. 2; Lahoti Decl., ¶ 3.)
23 Significantly, Defendants added language from the Court's proposed splash-page
24 disclaimer at the top of each webpage highlighted in yellow and in a font size larger
25 than that required by the Court. (Compare Image A (screenshot of top portion of
26 exemplar DMV.ORG webpage, scaled by 80%) with Image B (screenshot of
27 disclaimer on splash page, also scaled by 80%).) This disclaimer currently remains
28 on DMV.ORG webpages. Defendants also added acknowledgement check boxes

1 including similar disclaimer language which a visitor must click through before
2 sending communications to the website. (Lahoti Decl., ¶ 3.)

3 **Image A**



8 **Image B**

9 

12 As explained in the Motion and above, upon launching the splash page,
13 Defendants briefly removed the proactive measures, including the yellow-
14 highlighted disclaimer in Image A and the acknowledgement check boxes, to
15 compare the effectiveness of the splash page.¹ (Lahoti Decl., ¶ 6.) Upon doing so,
16 emails from visitors including personal information (which were nearly non-existent
17 since implementing the additional disclaimers in June 2008) began to increase,
18 which suggests that the Defendants' proactive measures have been more effective at
19 eliminating such emails than the splash page. (Lahoti Decl., ¶ 4 & 6.) Moreover,
20 since the banner has been added to all DMV.ORG webpages (rather than just upon
21 entry to the site), the disclaimer language is more pervasively spread throughout the
22 site.

23
24 ¹ Plaintiffs accuse Defendants of breaking a "post trial promise" to the Court by
25 temporarily taking down the self-imposed precautionary measures. (Opp.,
26 p.8:20-23.) Plaintiffs' assumptions are ridiculous. An obvious assumption in
27 Defendants' commitment to maintain its proactive measures, was that the
28 Court's judgment would either approve or supersede them. Moreover,
Defendants only temporarily removed the disclaimers, and did so to test the
effectiveness of the splash page. The measures have been reinstituted and
remain on the website today (though not required).

1 These factors indicate that even though the splash page is more restrictive,
2 Defendants' own proactive measures may be more effective. Additionally, the
3 splash page may have other unforeseeable, negative consequences (such as a
4 negative impressions from the splash page itself) that have impeded visitors from
5 entering the DMV.ORG website.

6 With the proactive measures in place, the Court can be confident that in
7 issuing a stay of the injunction, visitors will not be harmed since they are still made
8 aware that DMV.ORG is a publicly-owned website that is not owned or operated by
9 a government agency.

10 **5. Conclusion**

11 For the foregoing reasons, and for the reasons in Defendants' original moving
12 papers, Defendants respectfully request that the Court issue a stay of the injunction
13 pending appeal subject to maintenance by Online Guru of the current level of
14 disclaimers and safeguards now on the website.

15
16 Dated: October 13, 2008

17 Respectfully submitted,

18 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

19
20
21 By


BRIAN M. DAUCHER
JOSEPH H. TADROS

22
23 Attorneys for Defendants
24
25
26
27
28